

FCCP Sets Aside Recall Order in Cross-Border Child Custody Dispute

In F.C.P.L.A. No. 1183 of 2026, the Federal Constitutional Court set aside a Sindh High Court recall order and explained the framework for cross-border child-return and custody disputes.

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What the Federal Constitutional Court decided

In Muhammad Faraaz Shaikh and another v. Javeria Shahani and others, F.C.P.L.A. No. 1183 of 2026, the Federal Constitutional Court of Pakistan set aside the Sindh High Court order dated 16 March 2026 that had recalled an earlier custody-return order and started contempt proceedings against the petitioner.

The Court converted the petition for leave to appeal into an appeal and allowed it. Its immediate result was to remove the 16 March 2026 recall order.

The decision is important for cross-border child disputes. It addresses habitual residence, alleged wrongful removal or retention, the limited role of a Pakistani High Court where a Guardian Court has jurisdiction, the effect of a foreign custody judgment under section 13 of the Code of Civil Procedure, 1908, and the framework referred to in the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The judgment should not be overstated. It did not finally decide the merits of the parents' custody rights. It dealt with the legality of the Sindh High Court's recall order and recorded guidance for courts dealing with a child who has been removed or retained across national borders.

How the dispute reached the Pakistani courts

The factual history recorded in the judgment began in the United States. The parties married there in 2017, and their son was born there in January 2019. The judgment records that the child was a United States citizen and that a North Carolina court had made temporary custody arrangements after the parents separated.

According to the history summarized by the Federal Constitutional Court, the mother and child later travelled to Pakistan and a guardianship petition was filed before the Family Judge, Malir. The North Carolina court made orders concerning the child's return and later gave a final custody decision. The Pakistani proceedings then moved through the Sindh High Court and the Guardian Court.

On 18 January 2024, the Family Court directed that custody be handed over through the American Consulate in Karachi and authorized recovery measures. The mother filed an appeal before the District Judge, but it was withdrawn on 17 February 2024. The Federal Constitutional Court treated that withdrawal as a material fact because it gave finality to the Family Court order in the record before it.

The Sindh High Court had earlier directed custody to be handed over for the child's return to the United States. In 2026, however, it recalled that earlier order while dealing with miscellaneous applications and directed the petitioner to restore custody. It also initiated contempt proceedings. That 2026 recall order was the order challenged before the Federal Constitutional Court.

Why the recall order was set aside

The Federal Constitutional Court found that the Sindh High Court's 16 March 2026 order had referred to a decision in another matter without a proper connection to the controversy before it. More importantly, the impugned order had not addressed several material features of the existing record:

- the Family Court order had been challenged before the District Judge and the appeal was withdrawn;
- the earlier custody-return directions had been implemented;
- the respondent had pursued an appeal before the North Carolina court against the foreign court's final custody decision; and
- the consequences of those proceedings had not been discussed before recalling the earlier High Court order.

The Court therefore set aside the recall order. This was not an independent award of final custody to either parent. It was a correction of a High Court order that had reopened a dispute without addressing the finality and procedural history already on record.

Habitual residence and the child-return inquiry

The judgment refers to clause 6-A in the Schedule to the Family Courts Act, 1964 as permitting local family courts to deal with child-return matters under the 1980 Hague Convention framework.

The Court explained the central distinction. A child-return inquiry is not the same as a final custody inquiry. The return question asks where the child was habitually resident immediately before the alleged removal or retention and whether the removal or retention breached custody rights existing under the law, a judicial decision, an administrative decision, or a lawful agreement of that State.

The judgment specifically refers to Articles 3, 4, 12, 16 and 19 of the Convention. In practical terms, the framework stated by the Court is as follows:

- removal or retention may be wrongful when it breaches custody rights that were actually being exercised in the State of habitual residence;

- the Convention framework concerns children below the age of sixteen;
- where the conditions for return are met and the child has not become settled in the new environment, return to the State of habitual residence is the expected course;
- after notice of an alleged wrongful removal or retention, the requested State should not determine the merits of custody until the return question has been resolved; and
- a return decision does not itself decide the ultimate merits of custody.

The last point matters. A Pakistani court considering return of a child must not confuse temporary restoration of the proper jurisdiction with a final adjudication of which parent should have custody.

Foreign custody orders and section 13 CPC

The judgment also recalls section 13 CPC. A foreign judgment is conclusive only when the statutory conditions are met. The Court referred to jurisdiction of the foreign court, a decision on the merits, a correct approach to private international law that recognizes applicable Pakistani law, natural justice, absence of fraud, and consistency with Pakistani law.

This means that a foreign custody order is not enforced in Pakistan merely because it exists. The court must examine the requirements of section 13. At the same time, a court cannot ignore a foreign judgment, foreign proceedings, or the ordinary jurisdiction of the child's habitual residence when those matters are directly relevant to the return inquiry.

The Court's approach is therefore not automatic enforcement and not automatic disregard. It requires a legally disciplined examination of the foreign decision, the habitual residence of the child, and the limited question then before the Pakistani court.

The guidelines stated by the Court

The Federal Constitutional Court stated four connected guidelines for disputes involving parents and children connected to different countries.

First, the court should consider the jurisdiction of the foreign court, whether its decision was on the merits, whether the proceedings complied with private international law and recognized applicable Pakistani law, and whether the judgment was free from fraud and breach of natural justice.

Second, the court should determine whether the child's removal or retention violated the law, a judicial or administrative decision, or a lawful agreement of the State where the child was habitually resident immediately before the move.

Third, unless the child is found settled, the child is to be returned to the State of habitual residence.

Fourth, after receiving notice of the claimed wrongful removal or retention, the court should not decide the merits of custody unless it has first been determined that the child is not to be returned under the 1980 Convention framework.

These guidelines are a structured sequence. They require the court to identify the proper jurisdiction and return question before it reaches the wider and fact-intensive question of the child's long-term custody.

Role of the Guardian Court and writ jurisdiction

The Court referred to *Mst. Nadia Perveen v. Mst. Almas Noreen*, PLD 2012 SC 758, for the proposition that High Court intervention in a custody matter is exceptional, sparing and appropriate only in extraordinary urgency while keeping in view the Guardian Court's power to regulate interim custody.

It also referred to *Mst. Qurat-ul-Ain v. Station House Officer*, 2024 SCMR 486, on the relevance of an alternate remedy in a writ for recovery of a minor. The judgment further noted the approach in *Suo Motu Case for Recovery of Minor Kids of Mst. Tahira Jabeen*, 2010 SCMR 1804, where a child had been removed from the jurisdiction of a Guardian Court and taken abroad.

For counsel, the point is practical. A party must identify the correct forum and the exact relief required. A request to recover or return a child, an application for interim custody, a final guardianship claim, and enforcement of a foreign judgment do not necessarily follow the same procedural route.

What the judgment does not decide

The decision does not declare that every foreign custody judgment is automatically conclusive in Pakistan. Section 13 CPC still applies.

It does not decide the parents' final custody rights. The Convention framework itself distinguishes the return of a child from an adjudication on the merits of custody.

It does not remove the Guardian Court's role in appropriate cases. Rather, it emphasizes that the ordinary jurisdiction and remedies of the Guardian Court must be considered before a High Court intervenes.

It also does not permit a court to overlook a completed Pakistani order or a pending foreign appeal. The procedural history must be examined before recalling an earlier order or initiating coercive steps.

Final outcome

The Federal Constitutional Court converted F.C.P.L.A. No. 1183 of 2026 into an appeal and allowed it. The Sindh High Court order dated 16 March 2026 was set aside.

The judgment is a useful 2026 authority for lawyers dealing with international family disputes involving Pakistan. Its central lesson is simple: determine the child's habitual residence, identify the correct return question, test the foreign judgment under section 13 CPC, and keep final custody merits separate from the return process.

Judgment source and verification note

This article is based on the supplied eight-page judgment in Muhammad Faraaz Shaikh and another v. Javeria Shahani and others, F.C.P.L.A. No. 1183 of 2026, decided on 16 July 2026 and approved for reporting. The supplied copy does not state a reported citation.

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Primary source

Federal Constitutional Court of Pakistan, Muhammad Faraaz Shaikh and another v. Javeria Shahani and others, F.C.P.L.A. No. 1183 of 2026, decided 16 July 2026, approved for reporting.

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